



Appeal Decision

Site visit made on 24 October 2023

by Jonathan Edwards BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2023

Appeal Ref: APP/T0355/W/23/3317877 79 Windsor Road, Maidenhead SL6 2DN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Singh (Herbies Pizza) against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 22/03087, dated 13 November 2022, was refused by notice dated 13 January 2023.
 - The application sought planning permission for change of use of sandwich bar (A1) to take away shop (A5) without complying with a condition attached to planning permission granted via appeal reference APP/T0355/A/14/2219654, dated 23 September 2014 (planning application reference number 14/00524).
 - The condition in dispute is No 2 which states that: The use hereby permitted shall not be open to customers outside the following times: 0900 – 2100 Mondays to Saturdays and 1000 – 2100 on Sundays and Bank Holidays.
 - The reason given for the condition is: In the interests of safeguarding the living conditions of nearby residents.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The name of the appellant in the header is taken from the application form. The appeal form provides a different name but it has been confirmed that the appellant is Mr Singh.

Preliminary Matters

3. The change of use to a take away shop was permitted following an appeal and the use has commenced. The disputed condition limits the hours that the take away can be open to customers. The application form states the proposal is in effect to vary the condition to change the opening hours to 1100 to 2200 Sundays to Thursdays and 1100 to 2300 on Fridays, Saturdays and Bank Holidays. The Council has dealt with the planning application on this basis.
4. Through their appeal submissions, the appellant has set out other options for the variation of the disputed condition. These would either allow different opening times to those set out in the previous paragraph or would only allow extended opening hours for deliveries. However, these alternatives were not presented to the Council prior to its determination of the planning application leading to the appeal. Also, it is unclear whether these other options have been

the subject of any public consultation. As such, taking these other suggested variations into account may cause injustice or prejudice to interested parties. Therefore, I have assessed the appeal on the same basis as the Council and on the appellant's original proposed variation to the condition.

Main Issue

5. The main issue is whether the disputed condition as originally imposed is necessary in order to safeguard the living conditions of nearby residents.

Reasons

6. The take away occupies the ground floor of a 2 storey building. On one side to the appeal property there is a post office and a hairdresser's unit. On the other side there are the residences at 75 and 77 Windsor Road (Nos 75 and 77). It would appear from my observations and from the Council's submissions that the first floor of the appeal property is also used for residential purposes. To the side of the takeaway is a car parking area, which is near to the front doors and overlooking windows of Nos 75 and 77.
7. On my visit I saw that Windsor Road was busy with traffic that caused a significant level of local noise. However, this was during the day. No noise survey has been provided to demonstrate the background noise in the evening. In the absence of any survey, it is reasonable to expect that the level of traffic and associated noise would be less in the early night-time than during the day.
8. It is also fair to expect that customers visiting the take away use the adjacent car park. The appellant offers a delivery service that I would expect reduces the number of customers visiting the premises. Even so, the take away is clearly seen from the road and so it could attract custom from passing drivers. The nearby parking and customer entrance to the front of the shop would also encourage people to visit the take away to purchase food. As such, I am unconvinced that the delivery service would entirely prevent customers from coming to the premises.
9. The manoeuvring of vehicles, opening and closing of car doors and customers talking when outside the take away are all likely to be heard from the adjacent residences, particularly when the windows to the front and that face the car park are open. Again, there is no noise assessment that indicates otherwise.
10. The disputed condition helps ensure noise generated from activities in the car park do not disturb sleep in the late evening. In these respects, the condition serves a necessary purpose in ensuring satisfactory living conditions, particularly at Nos 75 and 77. The proposed extended hours of opening would increase the risk of noise disruption at a time when residents are more likely to be going to bed and when background traffic level noise is low. As such, the proposal would unduly affect the quality of life of residents.
11. The appellant has suggested that the extended opening hours should be allowed for a temporary period in order to allow monitoring. However, I see no reason why a fair understanding of the effects cannot be derived through a noise impact assessment as referred to in policy EP4 of the Council's Borough Local Plan 2022 (LP). Without such an assessment, I am unable to conclude that even a temporary extension of opening hours would avoid unacceptable noise effects.

12. For the above reasons, I conclude the disputed condition is necessary to safeguard the living conditions of nearby residents. The use of the appeal property as a take away subject to the proposed condition would not ensure satisfactory living conditions for occupiers of Nos 75 and 77 and so it would not accord with LP policy EP4. Amongst other things, this resists development that causes unacceptable levels of noise that affect the quality of life.

Other Matters

13. The appellant is critical of the Council's lack of communication before it determined the planning application. While noting these concerns, they do not influence my assessment of the proposed development and the appeal.
14. The appellant states that there are other take aways and commercial operations such as public houses that are in residential areas and that are allowed to open late into the evening. However, no specific business is referred to and so I am unable to draw comparisons to the appeal proposal. In any event, my determination relates to the particular nature of the scheme and its surroundings, which are unlikely to be exactly replicated elsewhere.
15. I understand that the current take away business has been successful and the proposed variation to opening hours would help address customer demand. The proposal would enable a business to expand and adapt. However, this benefit is of insufficient weight to overcome the harm identified in respect of the main issue. The proposal would be contrary to the development plan policies when read as a whole and there are no grounds to allow the appeal contrary to the development plan.

Conclusion

16. For the above reasons, I conclude the appeal should be dismissed.

Jonathan Edwards

INSPECTOR